

CHAPTER 40B TASK FORCE
FINAL MINUTES OF THE APRIL 28, 2003 MEETING

Commission Members:

Jane Wallis Gumble	Task Force Chair, Director, DHCD
Fred Habib	Facilitator, Non-Voting member, Deputy Director, DHCD
Mark Bobrowski	Municipal Consultant, Professor, New England School of Law
Senator Harriette Chandler	Senate Chair, HUD Committee
Jack Clarke	Director of Advocacy, Massachusetts Audubon Society
Howard Cohen	Board Member, Citizens Housing & Planning Association
Representative Michael Coppola	Massachusetts House of Representatives
Marc Draisen	Executive Director, Metropolitan Area Planning Council
Steve Dubuque	President, Massachusetts Non-Profit Housing Association
Representative Robert Fennell	Vice Chair, HUD Committee
Thomas Gleason	Executive Director, MassHousing
Bennet Heart	Attorney, Conservation Law Foundation
Representative Kevin Honan	House Chair, HUD Committee
Michael Jaillet	MMA Housing Subcommittee
Al Lima	Planning Director, City of Marlborough
Bill McLaughlin	President, Rental Housing Association of the GBREB
Kathleen O'Donnell	Attorney, Kopelman & Paige
Gwen Pelletier	Board Member, Massachusetts Association of CDC's
Mayor Sharon Pollard	(Absent) City of Methuen
Jeff Rhuda	Homebuilders Association of Massachusetts
Representative Harriett Stanley	Massachusetts House of Representatives
Senator Bruce Tarr	HUD Committee
Senator Susan Tucker	Represented by Julia Del Sobral
Senator Dianne Wilkerson	(Absent) Massachusetts Senate
Clark Ziegler	Executive Director, Massachusetts Housing Partnership

Attendees (as documented on the sign-in sheet):

Judith Alland	MAPC
Art Bergeron	
Roger Blood	Brookline Housing Advisory Board
Karen Bresnahan	DHCD
Virginia Bullock	Town of Brookline
Ted Carmen	Concord Square Development Co.
Nadine Cohen	Lawyers Committee
Marilyn Contreas	DHCD
Joy Conway	Greater Boston Real Estate Board
Ginny Coppola	Wife of Representative Coppola
Lynn Duncan	Town of Wilmington
Ben Fierro	Lynch and Fierro LLP
Paul Haguerty	Regnante, Sterio and Osborne, LLP
Mike Ivan	MHOC
Bud Jackson	MA Housing Opportunities Corp.
Michael Larkin	MHOC
Kate Melch	New England School of Law
Jacques Morin	Bayberry Building
Margaret Murphy	AHBC

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Attendees Continued

Chris Norris	CHAPA
Michael O'Halloran	Concensus Services
Kristen Olsen	DHCD
Sotir Papalilo	Westwood Associates
Bill Reyelt	DHCD
Phil Rice	Rice Associates, LLC
Bob Ruzzo	MassHousing
Kevin Sanginaro	Office of Senator Harriette Chandler
Dave Slatery	MassDevelopment
J. Talerman	Kopelman & Paige
Russ Tanner	Rising Tide Development
Maryann Young	Attorney General's Office
Sarah B. Young	DHCD
Juanita Zerda	DHCD

Materials Distributed:

- Population in Communities at 8% and Above on the Subsidized Housing Inventory, prepared by DHCD
- Massachusetts Dept. of Education School Expenditures per Student, provided by the Massachusetts Municipal Association
- Ch. 70 Aid as Percentage of Actual Net School Spending, Massachusetts Dept. of Education
- Communities Participating in CD Planning EO 418
- Comments from Howard Cohen regarding counting changes
- Categories of Bills Relative to Chapter 40B (2003-2004), provided by CHAPA
- Letter from the Town of Mansfield
- Letter from Diane W. Bartlett
- Letter from the Town of Wareham
- Petition Distributed by the Town of Duxbury
- Letter from the Town of Brookline
- Letter from John E. McClusky
- Memo from Anthony G. Galaitsis
- Letter from Representative Louis L. Kafka

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Introductory Remarks & Adoption of April 14, 2003 Minutes:

Fred Habib, Task Force Facilitator and Deputy Director for DHCD brought the meeting to order shortly after 2:00 PM, and asked those in attendance to introduce themselves.

Mr. Habib then asked Task Force members direct their attention to the Draft Minutes of the April 14, 2003 meeting. He explained that all Task Force members had been provided with a one-page document containing suggested changes sent in by Mike McCue and David Petersile regarding their testimony.

Attorney Kathleen O'Donnell then requested that Representative Frank Hynes' statement regarding public sewer in Marshfield on page 5 of the draft minutes be changed to reflect that Marshfield is *not* on public sewer. She added that Representative Hynes' point was that the town had to adopt stricter requirements due to the soil and lack of public sewer. She also requested that Mr. Habib's response to comments about the Housing Appeals Committee (HAC) on page 9 of the draft minutes be amended to reflect the statistics reported by Bonnie Heudorfer.

All Task Force members present voted in favor of accepting the minutes with these changes.

Scheduling of Additional Meetings:

Mr. Habib then noted that at the previous meeting Task Force members had agreed to schedule additional meetings in order to meet their May 30th deadline. He proposed that the additional meetings be scheduled for Tuesday May 20th at 10:00 A.M. and Tuesday May 27th at 10:00 AM.

All Task Force members present agreed to these meetings.

Mr. Habib noted that the Affordable Housing Business Coalition (AHBC) had brought in some letters that were available on the table, and would be posted on the Task Force website with the other submitted comments.

Presentation of Data (requested at previous meetings):

Mr. Habib noted that Task Force members had been provided with three charts containing data that had been requested at previous meetings. He added that these documents would also be posted on the website for anyone who was interested. He explained that the first chart titled "Population in Communities at 8% and Above on the Subsidized Housing Inventory" contains information that was requested at the previous Task Force meeting. He noted that the Massachusetts Municipal Association had provided the second chart, titled "Massachusetts Dept. Of Education School Expenditures Per Student". He then noted that this chart was interesting in that it shows the overall per-pupil cost and special needs per pupil cost. He explained that towns do not pay all of the per pupil costs and that the chart titled "Ch 70 Local Aid As Percentage Of Net School Spending" shows approximately how much of the per pupil costs the state aid covers. He added that this last chart shows the wide range in percentage of costs covered by the state in different communities.

Proposed Agendas:

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Mr. Habib noted that DHCD had developed the proposed agendas for the next three meetings by reading through every document that has been submitted to the Task Force and extracting the themes and ideas that seemed to be recurring. He stated that the list he had developed was not a finite list, but a starting point, a way to get the Task Force moving. He added that the way he would like to work on the topics in the agendas is to first get a direction from the Task Force on which items to pursue further, and then direct DHCD to come up with some language which the Task Force would review in detail.

Clark Ziegler, Executive Director of the Massachusetts Housing Partnership (MHP), noted that at the last meeting there had been a real push to get into the prospect of changes and cautioned that it would be a good idea to discuss where we are and what we've heard. He noted that he had observed three categories of issues: Non-Legitimate, Related, and Legitimate. He explained that since he had not seen an example of a town that has a good track record of affordable housing and since there was no evidence that 40B had destroyed the environment he placed both issues in the non-legitimate category.

Mr. Ziegler also noted that the related issues that had been brought before the Task Force included; local aid/school costs, and dysfunctional land use. He added that the 40B issues that he viewed as legitimate included; local capacity, technical assistance, multiple projects, and a process that is so controversial that people get themselves into positions where it is difficult for them to negotiate. Mr. Ziegler noted that it would be good to get an idea of the problems before jumping into the details of the solutions.

Mr. Habib noted that he had not heard anyone say that housing is not an issue, and asked if that was a fair statement to make. The Task Force members agreed. Mr. Habib the noted that cities and towns need to play a role in addressing the need for housing and that there are things that the Task Force can do to help them promote and provide housing. The Task Force members agreed.

Legislative Overview:

Aaron Gornstein, Executive Director of the Citizens Housing and Planning Association (CHAPA) presented an overview of the Bills proposing changes to 40B. He explained that CHAPA had organized the Bills into 16 categories, and provided copies of a document prepared by CHAPA titled "Categories of Bills Relative to Chapter 40B (2003-2004)".

Below is a brief summary of the 16 categories that Mr. Gornstein discussed.

1. Counting of units towards 10% goal (include DMR/DMH group homes, DPH units, DSS, Dorms, Mobile homes, Section 8, all units in ownership developments, all inclusionary zoning units, nursing homes, residential schools, and assisted living units)
2. Reduction of 10% goal - 8%, 7% or 5%
3. Change Income Eligibility requirement from 80% to 65% of AMI
4. Shift Jurisdiction from ZBA to Planning Board
5. Reasons for Project Denials- Shift Burden of Proof for the need of zoning waivers to developer
6. Planned Production - require .5% annual increase plus a housing plan (DHCD regulations currently require .75% annual progress)

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7. Moratoriums
8. Technical Assistance
9. Reduce developer profit to 10%
10. Adoption of inclusionary zoning allows exemption from 40B
11. Increase affordability requirements to 35%
12. Require Affordability in Perpetuity.
13. Increase state education Aide in communities that increase their Subsidized Housing Inventory
14. Special Commission on Ch. 40B
15. Housing Appeals Committee in each senatorial district
16. Comprehensive Changes
 - a. Representative Coppola's Bills:
 - Waiver must be weighed against local concerns, must make case that project will not neg. Impact local concerns, board must find that need for project outweighs local concerns
 - All units count if inhabited by someone at or below 80%
 - Recent progress defined as 10 units
 - Hearing process changed substantially
 - b. Representative Galvin's Bill:
 - Reduce 10% to 8%, limit projects, fees to developer
 - c. Representative Hynes' Bills –
 - Abolish the HAC & Change 40B process to make similar to 40A
 - Plan would allow exemption from 40B
 - LHA monitor use waiting lists, developer would pay for administrative costs
 - New project size limit to 135% of what land is actually zoned for.
 - Exclude NEF
 - Prohibit more than one application at time
 - Allow residents to pay 40% income
 - d. Senator Wilkerson's Bill
 - Incorporates all changes DHCD has made via regulations legislatively

Discussion of Solutions

Consistency & Equity:

- Count 100% of homeownership units – if adopted should there be a bonus to develop rental housing (rationale: because zoning relief is being given to the development, all units should be counted on the inventory)

Mr. Habib noted that it seems like he had heard some consensus on the issue previously and asked Task Force members to respond.

Representative Harriett Stanley stated that she was in favor of changing how units are counted. She noted that under the current counting policy for ownership units, only the 25% of the units that are affordable are counted. She noted that the current counting policy makes 10% a moving target if you do ownership units, and explained that in Arlington it would take 4,175 new ownership units to get to 10%. She added that she supported the idea of counting all ownership units since all the units get the density

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bonus. She also supported the idea for a bonus for rental units. Representative Stanley then noted that currently towns must review applications in the order in which they were submitted, and added that she would like to provide communities with the ability to “jump the line” to approve projects that met their needs best.

Mark Bobrowski, Municipal Consultant and Professor at the New England School of Law, noted that it was his understanding that ZBAs can review the applications in any order they wish. He noted that in his experience towns could approve the fourth or fifth application that was submitted and then deny first or second application that was submitted. He added that he currently has a case before the HAC on this issue.

Howard Cohen, Board Member of CHAPA, stated that he agreed with Representative Harriett Stanley that the current counting policy puts too much growth pressure on communities. He noted that the problem with ownership is that if you build 100 units and 25 are affordable, 100 units are added to the denominator and 25 units are added to the numerator. He then explained that one way to address this problem would be to not count the new ownership units in the denominator. He added that another way to address the problem would be to allow communities to limit ownership developments to half of their 10% obligation. He noted that this would provide a balanced approach by providing incentives for rental development, while limiting the number of units added to denominator. Mr. Cohen noted that the ideas he had presented were his own, and had not yet been endorsed by CHAPA.

Representative Harriett Stanley noted that under Mr. Cohen’s scenario the growth rate would be reduced to 25%. She added that the notion of production of affordable housing and the notion of the production of housing are really not one and the same.

Mr. Habib noted that the topic of affordability is on the agenda for the next meeting.

Bill McLaughlin, President, Rental Housing Association of the GBREB noted that he has heard the opposite of what Mr. Cohen and Representative Stanley have been talking about, and that towns have been asking developers to do condos rather than rental units.

Tom Gleason, Executive Director of MassHousing, noted that the most powerful subsidy available today in Massachusetts is the increased density allowed under 40B. He noted that he believed that a community should be able to decide whether they want rental or ownership. He added that he thought that ownership and rental should be counted the same, but that he did want to look at Mr. Cohen’s proposal. Mr. Gleason then pointed out that the current counting policy was developed in the mid 1980’s and that he thought it was both fair and reasonable to revisit it twenty years later. He noted that the subsidy environment today is very different from what it was in the 1980s. He also noted that developers generally do only ownership or rental, and that it is rare for a developer to do both.

Mr. Habib asked Mr. Gleason if he thought the Task Force should provide a rental incentive.

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Mr. Gleason responded that it should be a statewide decision and that if the state wanted to provide an incentive it should make more money available for the priority housing type. He added that communities should be able to decide what they want.

Steve Dubuque, President of the Massachusetts Non-Profit Housing Association, noted that communities should not be penalized for doing ownership units by having all the new units produced added to inventory and only affordable units added to numerator. He added that he was hesitant to allow communities to build only ownership units, when there is such a need for rental housing, especially for families with children. He added that he found that Mr. Cohen's proposal allows us to get that balance.

Attorney Kathleen O'Donnell pointed out that there has been an assumption that towns have some control over what projects come before them, and that assumption not true. She noted that market forces, such as the recent low interest rates, which have led to developers to do more ownership, determine the types of projects that are proposed. She added that it is not that towns are saying no to rental, it is that they are just not seeing rental proposals. She then stated that all units should count because all units get the benefit of the density bonus.

Bennet Heart, of the Conservation Law Foundation, suggested that the Task Force think about how the counting policy affects the production of units regionally. He noted that with the proposed counting changes fewer new housing units will be built. He then asked if someone could explain the reasoning for the counting policy.

Mr. Gleason responded, stating that the counting policy grew out of the state Homeownership Opportunity Program (HOP) that came about in the mid 1980s. He noted that at the time there was a discussion about how to count those units and the result of those discussions was that rental units and ownership units are different and that they should be counted differently. He then suggested providing an incentive so that rental housing gets a bigger push, but that ownership units could be counted without "messing-up" the math too much.

Mr. Heart asked what the impact would be on rental production if the units were counted equally.

Mr. Bobrowski noted that data that had been presented previously showed that about 28,000 units had been approved under 40B, and that 24,000 are counted, so the impact would be about 4,000 units.

Mr. Gleason noted that about 2/3 of the applications to MassHousing for project eligibility letters were ownership projects, but that the unit break down of rental and ownership is just about equal. He attributed this to the tendency of rental projects to contain more units.

Mr. Ziegler noted that there have been a number of situations where MHP has worked with towns and the counting policy has provided a great incentive to municipalities to do rental development. He added that he liked Mr. Cohen's idea of taking the market rate ownership units out of the denominator.

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Representative Harriett Stanley asked Mr. Cohen if a town would be able to deny proposals for ownership developments if they had already done 5% ownership, and were ready for rental.

Mr. Cohen responded that under his proposal, if you had done 5% ownership you could continue doing ownership if you chose or you could deny ownership developments in favor of using rental to get to 10% in order to limit overall growth.

Representative Harriett Stanley then asked Mr. Cohen if rental development did not come before the ZBA, they could deny every ownership application that did if they had already done 5% ownership.

Mr. Cohen answered yes.

Mr. McLaughlin noted that housing is produced privately and that the reality under Mr. Cohen's proposal is that if you were at 5% for ownership, and you had land that was suited for housing, you wouldn't get applications from developers for ownership. He added that it would be like being at 10%.

Mark Draisen, Executive Director of the Massachusetts Area Planning Council noted that though it was important to reach a middle ground, it is also important to be aware that the intent of the statute was for rental units and Massachusetts still really needs rental units. He added that he liked Mr. Cohen's way of dealing with the denominator, because it provides an incentive for rental. He also agreed with Attorney Kathleen O'Donnell in that housing is generated by market conditions, especially in hot market. He then noted that the wise developer tries to present a development that is consistent with what towns want. He noted that he believed it would be good to provide a meaningful incentive for rental.

Mr. Habib noted that the current legislation requires the use of the decennial census for the number of year round housing units, and asked Mr. Cohen how he would address that in his proposal.

Mr. Cohen responded that the units built under 40B would be deducted from the census count.

Al Lima, Planning Director for the City of Marlborough, noted that there are some very large ownership projects and asked why not treat them the same way.

Representative Michael Coppola suggested keeping things simple, and not fear that counting the units equally would allow communities to get to 10% with fewer units. He then noted, that because counting equally would allow communities to reach the goal of 10%, they would be less adverse to proposals if they know all the units will count.

Attorney Kathleen O'Donnell suggested giving towns a bonus for something that they built with Community Preservation Act funds, Affordable Housing Trust Fund money, etc. She suggested that a bonus point for something the community developed itself would encourage communities to pursue their own projects.

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Attorney Kathleen O'Donnell suggested that the bonus could be for town-sponsored rental developments.

Mr. Gleason suggested revisiting Attorney Kathleen O'Donnell's point for later. He then noted that what the Task Force should do is something that stands the test of time, and what stands the test of time are things that are simple. He noted that he would like to understand Mr. Cohen's math, but that it seems too complicated. He also noted that Mr. Cohen's proposal changes something that is mathematical equation to something that must be adjusted and must be certified by DHCD. He encouraged the Task Force to keep it simple.

Mr. Dubuque noted that Mr. Cohen's proposal is simple to understand when you explain it by saying that you withdraw the units built under 40B from the count of year round housing units. He noted that it means communities would not be trying to reach a moving target.

Mr. Habib noted that he had been hearing two proposals: 1) counting rental and ownership equally and 2) removing homeownership units built under 40B from the denominator. He added that he was not hearing consensus on either, and suggested that DHCD draft some language on each proposal to discuss later.

Gwen Pelletier, Board Member of the Massachusetts Association of CDC's suggested that if the Task Force goes in the direction of 100% counting, there needs to be a provision that the units are year round units. She added that since only 25 units (in a 100 unit development) have to be affordable the other 75 market rate units could be seasonal or second homes. She added that those seasonal and second home units shouldn't count, and that this is a dilemma for resort communities.

Mr. Draisen responded that he believed that currently only year-round units are in the denominator. He then noted that if all ownership units are counted, and then other proposed changes are made, we will produce less housing and we should not produce less as we are not producing nearly enough now.

Mr. Habib noted that DHCD would develop the two ideas further.

Mr. Dubuque expressed concern about fair housing laws and the legal implications of caps on either rental or ownership projects and suggested that DHCD have its attorneys look at this issue.

- *Make the statutory minima regulation consistent with the statute so that the 10% statutory minima is calculated based upon the most recent decennial census*

Mr. Habib noted that regulations are inconsistent with the statute on this issue.

Mr. Ziegler noted that the problem with using the decennial census is that it creates huge jumps every 10 years.

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Jane Wallis Gumble, Director of DHCD and Chair of the Task Force, asked if this problem has been seen before, or if it is just a statistical problem

Mr. Ziegler responded that he was concerned that in using the decennial census, the window for 40B opens only every 10 years.

Mr. McLaughlin noted that the census is outdated and that towns know how many permits they have issued. He suggested putting the burden on the developer.

Mr. Bobrowski noted that the downside of not using the decennial census is that it makes communities constantly check the number of housing starts to see if they are above or below 10%.

Mr. Lima noted that speaking for the city of Marlborough, the breathing period provided by using the decennial census is great, and the city needs the hiatus. He then asked who would track all the updates.

Mr. Dubuque noted that Mr. Lima had just made his point, which was towns shouldn't get off the hook for 8 years.

Michael Jaillet of the Massachusetts Municipal Association, noted that if a town is over 10% by one unit, using the decennial census allows the town to think about future development, educate itself and be proactive about future affordable housing. He added that if a community doesn't proactively make progress after getting to 10%, and then gets knocked down with the new census, then that's their problem.

Attorney Kathleen O'Donnell noted that there seems to be an assumption that a lot of communities are close to 10%, which is not the case.

Mr. McLaughlin noted that its not a breather, its 10 years and that he believes it would be a mistake to only use the decennial census.

Attorney Kathleen O'Donnell asked why shouldn't a town get a breather if it has reached 10%- what would be the incentive if you were never going to get a break from these applications?

Representative Michael Coppola noted that any housing is good as it increases the stock.

Mr. Habib noted that though he had really hoped for consensus on this issue, it didn't seem like he was hearing it.

Sarah B. Young, Deputy Director for Policy at DHCD, asked Mr. Habib if it would be helpful if DHCD provided data to show the changes in the year round housing units as documented in the decennial census for the past 5 reports.

Mr. Habib responded that the data would be helpful.

- Limit number of 40B projects and or units a community can review at any one time

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Mr. Habib asked the Task Force to respond to this proposal and to speak to whether the number of projects or the number of units should be limited

Representative Michael Coppola noted that the problem is density and not the number of projects but their size.

Mr. Gleason noted that MassHousing is the biggest issuer of site approval letters, and there are no boundaries or guidelines on this issue. He noted that there is a town that is looking at potential of 9 proposals. He added that MassHousing needs some guidance on this issue to ease the tensions, and that three or four proposals sounded like a good limit. He noted that one is too little and five is too much. He also noted that the number of units should be a factor.

Mr. Draisen suggested a limit to both the number of projects and the number of units, in the form of x number of units or x number of projects. He suggested that if this is adopted the timing restrictions should be changed so that developers would wait in line to have their applications reviewed, and not just be denied. He also noted the need for some technical assistance to help deal with the pressure.

Mr. McLaughlin noted that the amount of work it takes ZBA members to review a 200 unit development is probably equal to the work it takes them to review a 25 unit project. He added that there should be a timing provision to this proposal to limit the time off to a period of one year from date the developer applied.

Mr. Bobrowski noted that towns are now looking to achieve 2% recent progress to get one year off, so looking at three proposals would not always be to the town's advantage.

A suggestion was made to make the project limit at the town's option.

Mr. Jaillet noted that three seems to be a good number because it works with ZBA schedules. He also noted the need for a time incentive.

Mr. Habib noted that he was hearing consensus for a limit on a combination of the number of units and the number of projects with a time limit.

- *Request permanent MHP funding for consultant services through charging fees for site eligibility applications*

Mr. Habib asked Task Force members to comment on this proposal.

Mr. Gleason stated that due to the potential for a conflict of interest if MassHousing were to pay the consultants, he would suggest that MassHousing collect the money as fees from developers and then route it to MHP for consultants.

Mr. Rhuda suggested the option of the developer paying the fee directly to the ZBA.

Mr. Bobrowski noted that the real opportunity for the town to comment is on the financials of the project, which are not allowed to be discussed at HAC.

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Mr. Cohen noted that the developer should put up some money, but that it should go to MHP since it would be awkward if the money went directly to the ZBA, which would raise the question of issue of who is buying whom.

Jason Talerman, of Kopelman & Paige, noted that one issue with the MHP technical assistance is that some consultants are housing consultants some are attorneys. He suggested the list of consultants must be tightened. He also noted that communities are allowed to hire consultants at developer's expense under current legislation and suggested that this would be the best way as it allows communities to use experts they know and have experience working with.

Mr. Habib noted that the Task Force needs to see a proposal on this issue, and that the objective is to charge money to developers upfront for technical assistance.

Mr. Ziegler noted that he would draft something on this proposal.

Mr. Habib noted that he was going to skip the next item on the agenda and return to it later

- Instruct housing agencies to create a coordinated web site that provides a "Tool Kit for Communities" including: financial resources for housing development, deed riders, lottery procedures, consultant database, how to create a local AHTF, income guidelines, zoning by laws, planning tools, 40B TA, "Taking the Initiative" booklet, housing needs workbook, calendar of trainings and other events, links to other websites.

Mr. Habib asked the Task Force members how they felt about this proposal to create a coordinated website on 40B.

All Task Force members were in favor.

Improving the Process

- ZBA vs. Planning Boards (possibly by local option)
Mr. Habib asked Task Force members how they felt about letting planning boards review 40B applications rather than ZBAs, and how they felt about allowing this as a local option.

Representative Michael Coppola stated that local option is always best.

Mr. Dubuque noted that the job of the ZBA is to hear cases for appeals from local zoning; it's what they do. He then stated that he didn't think it was a good idea to allow it to be the planning board.

Mr. Bobrowski noted that the vast majority of ZBA members are appointed, and Planning Board members are elected. He added that planning boards are subject to political pressures and election cycles, which makes a difference.

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Mr. McLaughlin noted that he believes that the ZBA is the appropriate board as they can request input from other local boards.

Mr. Habib noted that he was hearing that people are split on this and asked if people thought it should be a local option.

Mr. Jaillet noted the need to keep the jurisdiction in a board that is not subject to political will.

Representative Harriett Stanley noted her concerned that people are assuming that anyone who is elected is going to bend towards political pressure. She asked Task Force members to keep in mind that 40B was passed by elected officials.

Mr. Heart asked those who are advocating that planning board should be the reviewing body if there is there a perception that the ZBA's are not adequately doing their job and that planning board would do a better job.

Representative Harriett Stanley noted that planning boards would be more involved with the process and that the ZBA gives just a yes or no.

Attorney Kathleen O'Donnell disagreed with Representative Harriett Stanley, noting that ZBA's are semi- ad judicatory and can bring in more weight to get feedback on proposals from other boards.

Mr. Habib asked how Task Force members thought about requiring other boards to weigh-in with ZBAs.

Mr. Bobrowski responded noting that other boards are required to weigh-in now.

Mr. Rhuda noted that in his experience he had seen that ZBAs were soliciting other boards for comments, but that they were not getting them until too late in the process. He also noted that he had yet to see a planning board member run on a platform of affordable housing.

Senator Bruce Tarr noted that if this were part of the planning board process, then 40B would not be an anomaly, but would be planned for. He also noted that if you want more housing and want to see communities plan for more housing, then you need to put it in the hands of the people who will do that. He added that communities have said that they have more resources in their planning boards than in their ZBAs. He then suggested making the presumption that the ZBA is the authority for comprehensive permit applications, but allowing communities to take action to change it to the planning board.

Representative Kevin Honan noted that in traveling around the state he had heard from towns that they are planning on how to fight 40Bs, and that he wouldn't be opposed to seeing the positive elements of the planning board brought into the process earlier.

Mr. Draisen noted that he would like to try to encourage these discussions to get before the boards earlier in the process when they would be more meaningful. He added that he

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was concerned about local option because it would add a whole additional layer of confusion to the process.

Mr. Habib noted that he was hearing consensus that the planning board needs to be brought into the process earlier.

Mr. Rhuda asked Task Force members to keep in mind that planning boards have other applications and that 40B applications would have to get in line, which would slow down the process for 40B developments and other developments.

Mr. Dubuque noted that when South Shore Housing has a 40B proposal they go to the planning board and then to housing authority to discuss their proposal and they don't proceed until they have approval from both. He added that this was not unique to South Shore Housing as others did this as well.

Mr. Habib noted that there was consensus to bring the planning board into the process earlier but no consensus on transferring the authority to the planning boards or for supporting local option.

- Promote and encourage local housing partnerships to endorse 40B proposal before submitting to ZBA (local option)
- Encourage applicants to present to municipal boards and staff before the 30 day comment period
- Provide for more detailed instructions to chief elected officials during 30 day comment period
- Towns should receive assistance at time of receipt of site eligibility letter – some ideas include: mandatory public meeting with town officials or ZBA that includes developer and a 40B expert (housing consultant provided through MHP, Pro Bono lawyer through Mass Bar Association, or representative from subsidy agency)
- Initial letters to the town should be sent to ZBA and all relevant boards
- Initial letters should contain more information including preliminary site plan and narrative
- Require all appropriate local boards to weigh-in on comp. permit
- Promote the use of DHCD's model 40B guidelines

Mr. Habib noted that nearly everyone has talked about the early stages of the process. He added that the Task Force has a number of proposals responding to this including; getting local housing partnerships to weigh-in before applications go to the ZBA, addressing the confusion about what towns are commenting on during 30-day comment period and the limited information available during that time, and having public meeting for comments with a 40B expert present to make sure misinformation does not ruin the process.

Mr. McLaughlin noted that this is how the process should work, that more information earlier makes things go through smoother. He added that they shouldn't make it a requirement that all boards comment on a 40B application because it would delay the process.

Mr. Ziegler noted the need to further encourage discussions earlier in the process, suggested the Task Force consider encouraging good-faith negotiations early on, and

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having the process ratified at the end. He then noted the need to give the partnership model some teeth.

Mr. Lima noted that project eligibility letters should include more information, as the last two letters that Marlborough received didn't even have the address of the proposed project.

Attorney Kathleen O'Donnell asked how many housing partnerships are in the state.

Mr. Dubuque responded that some call themselves committees, and some are adhoc groups.

Attorney Kathleen O'Donnell stated that she did not support requiring boards to comment.

Mr. Habib asked Attorney Kathleen O'Donnell if she would support requiring boards to comment within specific time period.

Attorney Kathleen O'Donnell responded that she would.

Mr. Bobrowski noted that he didn't like the idea of a hearing without specific project information.

Mr. Habib noted that the proposal would be to set-up an information session, possibly with a pro-bono attorney. He then asked Task Force members to respond.

Mr. Dubuque noted the need to make sure that this early session is not a situation where parties are making cases to a judge or a board that they are trying to sway. He noted that there should be an actual discussion.

Mr. Ziegler suggested allowing parties that decide by mutual agreement to take a breather, and negotiate separately and then come back to the ZBA with a negotiated proposal or written agreement to receive an expedited review.

Mr. Habib responded that DHCD would work on some language for Mr. Ziegler's suggestion. He then asked Task Force members if they thought that DHCD's Local Guidelines was used and if it needs to be updated.

Attorney Kathleen O'Donnell responded that many communities are unaware of it, and that there is also a perception that it favors developers.

Mr. Draisen requested that RPAs be included in any review of DHCD's Local Guidelines.

Mr. Habib agreed.

Mr. Cohen noted the need to discuss the issue of the legality of encouraging negotiation.

Technical Improvements

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- Require the DHCD to update a community's official SHI attainment at the community's request

Mr. Habib then suggested requiring DHCD to update the Subsidized Housing Inventory list every time a revision is made. He explained that currently towns just get a letter confirming any requested additions to the inventory and their new percentage, but the list that is posted on the website is only updated every 2 years.

All Task Force members agreed to this proposal.

- Can the new "non-governmental entity" regulations impact the NEF projects in the pipeline

Mr. Habib noted that the Task Force has heard requests to make the older NEF projects that are not impacted by the new regulations requiring a project administrator subject to the new regulations. He asked Task Force members if this was legal.

Attorney Kathleen O'Donnell responded that it was probably not legal.

Mr. Cohen noted that even if it was legal, it shouldn't be done. He added that he didn't think these NEF projects are actually going to get through process, and that the HAC would take close look at them.

Mr. Talerma noted one case where the new regulations should be applicable to an old project, and cited an example of a project that was reduced in size and type and needed new project eligibility letter. He asked if in this case the project would be subject to the new regulations.

Ms. Young responded that if a new letter were issued based on a new or substantially revised project, it would have a new date and thus be subject to the new regulations.

- Perpetuity vs. a shorter deed restriction (30 or 40 years)

Mr. Habib noted that the Task Force has heard the suggestion that units be affordable in perpetuity since density bonus is forever. He then noted the need to discuss the legality of this suggestion.

Attorney Kathleen O'Donnell asked if DHCD would need to get the sign-off for the secondary market.

Mr. Gleason responded that for homeownership, when a unit turns-over a new deed-restriction is done for the unit, which does not impact the secondary market. He added that if the community wants thirty years of affordability, they should be able to do that. He added that some communities have negotiated for a specific period of time rather than perpetuity.

Mr. Jaillet noted that it was his understanding that if town does not speak on the issue in the comprehensive permit, then it is assumed the units are affordable in perpetuity.

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Mr. Bobrowski noted that if a town wants affordability in perpetuity, then they should get it.

Mr. Habib stated that that there seemed to be a consensus to keep this provision as is.

Mr. Habib suggested returning to the topic that the Task Force had skipped earlier.

Local Capacity and Technical Assistance

- Create incentives to approve developments in a timely fashion

Mr. Dubuque noted that initially the time period for getting a comprehensive permit was 75 days.

Mr. Rhuda noted that the real delay in the process is the appeal process at the HAC and superior court, which is really holding housing production back. He added that with a 37-cent stamp abutters could buy a two yearsdelay.

A gentleman in the audience noted that if ZBAs really want to delay a project they can request additional information every other meeting. He suggested that ZBAs should request all information upfront at once.

Mr. Rhuda noted that there is no limit for the length of time a ZBA can have the public hearing period open, and suggested that the Task Force look at this.

Mr. Bobrowski noted that there is a constructive denial appeal issue, in which case the HAC would remand it back to town who would be required to take action in 90 days.

Mr. Rhuda asked Mr. Bobrowski how long it would take the HAC to remand the appeal to the town.

Mr. Bobrowksi responded that it takes about three weeks to get before the HAC.

Mr. Habib noted that he had been hearing that working on the front end of the process will reduce delays later in process, and that the HAC would be addressed in later meetings.

Attorney Kathleen O'Donnell noted that she disagreed with the idea of establishing time limits, because often developers do not provide the requested information to communities.

Mr. Gleason noted that the Task Force needs to figure out a way to "say no and make it stick" if the developer or the community is not behaving. He added that he thought that limiting the number of projects/units before the ZBA is a huge give, and that people shouldn't be allowed to misbehave during this process.

Ms. Pelletier agreed with Mr. Gleason.

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Mr. McLaughlin noted that a developer would not say deny me and I'll go to HAC and then go back to ZBA in 9 months.

Mr. Gleason noted that they had heard that complaint previously, usually from people who were not developers full-time and that were abusing 40B. He suggested that perhaps the solution is that MassHousing would pull the site approval letter on projects with developers not producing or behaving.

Mr. Habib noted that the solution could rest with the project administrator and further stated that we need to continue to work on the issue of "bad apples."